

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

**CIVIL NO. 2:08CV15
(2:00CR18)**

EDDIE DeWAYNE CARRINGER,

Petitioner,

Vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on the Petitioner's motion for a certificate of appealability regarding the Memorandum and Order of Dismissal filed June 24, 2008, dismissing his § 2255 motion as untimely and the Order filed July 21, 2008, denying his motion for reconsideration.

An appeal may not be taken to the court of appeals from the denial of a motion pursuant to 28 U.S.C. § 2255 unless a certificate of appealability has been issued. **28 U.S.C. § 2253(c)(1)(B)**. Such a certificate may not issue unless the applicant has made a substantial showing of the denial of a constitutional right. **28 U.S.C. § 2253(c)(2)**. The Petitioner has not made

such a showing. Indeed, Petitioner concedes that his motion to vacate is time-barred but asserts that he is seeking this appeal in order to argue that this Court should have overlooked that fact in order to allow him to press his claims of “miscarriage of justice” and “actual innocence.” However, to the extent that such claims represent little more than Petitioner’s attempt to resurrect his equitable tolling arguments, he has ignored this Court’s determination that his near seven-year delay could not be equitably tolled based upon the allegedly disabling withdrawal affects of his voluntary drug and alcohol and drug abuse. As such, Petitioner has failed to establish “that jurists of reason would find debatable whether the petition states a valid claim of a denial of a constitutional right[.]” ***Slack v. McDaniel*, 529 U.S. 473, 480-82 (2000).**

IT IS, THEREFORE, ORDERED that the Petitioner’s motion for a certificate of appealability is hereby **DENIED**.

Signed: August 22, 2008



Lacy H. Thornburg
United States District Judge

